

**BEFORE THE BOARD OF REGISTRATION  
OF MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF:**

**JRK CONTRACTOR LLC t/a JRK BUILDERS  
RESPONDENT**

Resident Agent Fernando Guedes, Sr

**ORDER TO SHOW CAUSE WHY  
BUILDING CONTRACTOR'S LICENSE  
#BC 218983 SHOULD NOT BE REVOKED**

OZAH Case No. CP 18-01  
Order to Show Cause Regarding:  
OCP Complaint # 16-OC-047597  
OCP Complaint # 16-OC-048789  
OCP Complaint # 17-OC-057291

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**ORDER REVOKING BUILDING CONTRACTOR'S LICENSE BC 218983**

**Opinion**

The above-captioned case – *In the matter of JRK Contractor LLC t/a JRK Builders* – was initiated by the Office of Consumer Protection (hereinafter, “OCP”) on March 20, 2018, by a certification (Exhibit 1) to the Montgomery County Board of Registration (the “Board”). By this action, OCP sought to have the Board revoke Building Contractor’s License #BC 218983, conditionally held by JRK Contractor LLC (hereinafter, “JRK” or the “Respondent”), for alleged violations of Montgomery County law.

On March 21, 2018, the Board of Registration referred the matter to the Office of Zoning and Administrative Hearings (OZAH) by an “Order and Referral for Hearing” (Exhibit 2). The Referral Order directed that the Office of Zoning and Administrative Hearings hold a hearing pursuant to the Montgomery County Administrative Procedures Act (MCAPA) and submit a written recommendation and order to the Board.

The Office of Zoning and Administrative Hearings held a hearing, under the Administrative Procedures Act, on May 18, 2018, and the record closed on June 29, 2018, after post-hearing filings by the County. On July 6, 2018, the Hearing Examiner timely submitted a Report and Recommendation to the Board of Registration. The hearing on this matter having been conducted, after due notice to the Respondent, the Board of Registration hereby enters the following findings of fact and conclusions of law:

1. The Board of Registration has jurisdiction to hear and decide this case under Montgomery County Code Section 31C-8(b);
2. The Complainant is the Montgomery County Office of Consumer Protection, as represented by the County Attorney, and the Respondent is JRK Contractor LLC t/a JRK Builders;

3. The Respondent is the holder of Building Contractor's License #BC 218983, issued to the Respondent on April 9, 2015 by the Office of Consumer Protection (Exhibit 11), and conditionally renewed by the Board of Registration on April 4, 2017 (Exhibits 24 and 26);
4. The Office of Consumer Protection has received a complaint against the Respondent from each of the owners of 4503 Elm Street, (OCP Case #16-OC-047597); 5608 McLean Drive, (OCP Case #16-OC-048789); and 5612 McLean Drive, (OCP Case #17-OC-057291) alleging that Respondent violated Chapter 11, Consumer Protection; Chapter 31C, New Home Warranty and Builder Licensing; and Chapter 8, Buildings, of the Montgomery County Code. (Exhibits 1 and 3; Tr. 32-63);
5. The Board of Registration designated the Office of Zoning and Administrative Hearings (OZAH) to conduct the hearing under the Administrative Procedures Act (Exhibit 2);
6. The Respondent was duly served with an Order to Show Cause why it's Building Contractor's License #BC 218983 should not be suspended or revoked and a Notice of the Hearing set for May 18, 2018 before an OZAH Hearing Examiner (Exhibits 3, 4, 5 and 6);
7. The Office of Zoning and Administrative Hearings held a hearing under the Administrative Procedures Act, as noticed on May 18, 2018; evidence was presented by the County in support of its claim that Respondent had violated the provisions of the Montgomery County Code and State Law (Tr. 1-133); and the record closed on June 29, 2018, after post-hearing filings by the County.
8. The Respondent was given an opportunity to appear at the hearing to respond to the allegations, but failed to do so (Exhibits 3, 4, 5 and 6; and Tr. 6-7);
9. The proposed Findings of Fact and Conclusions of Law submitted by the County on June 15, 2018 (Docket No. 15), accurately summarized the evidence and pertinent legal authorities in this case. Those proposed Findings of Fact and Conclusions of Law were adopted by the Hearing Examiner, except as specifically noted in his Report and Recommendation,<sup>1</sup> and are incorporated herein by reference, with the exceptions noted by the Hearing Examiner. A copy of the County's submission, compressed into single-spacing, is attached as Appendix I to the Hearing Examiner's Report and Recommendation.
10. On July 6, 2018, the Hearing Examiner timely submitted a Report and Recommendation to the Board of Registration, finding that the Respondent had violated CHPA (Md. Code Ann., Real Property §§10-501 – 509), and repeatedly violated Montgomery County Code Chapter 31C. The Hearing Examiner therefore recommended revocation of the Respondent's Building Contractor's License # BC 218983;
11. Based on this record and the Report and Recommendation of the Hearing Examiner, which is

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<sup>1</sup> While the County's filing accurately portrayed the facts and the pertinent law, the Hearing Examiner disagreed with two of the conclusions reached by the County – that the misstatement of the resident agent's address itself warrants revocation of the license under County Code § 31C-8(b)(1) and that the evidence is sufficient to establish a conversion of building materials in violation of Code § 31C-8(b)(13). Nevertheless, the overwhelming evidence of other violations by the Respondent amply supports the revocation of the license in question.

incorporated herein by reference, the Board of Registration hereby finds that the Respondent has violated Montgomery County Code Chapter 31C, and the State of Maryland's Custom Home Protection Act ("CHPA" - Md. Code, Real Property §§10-501– 509), as described below:

- a. County Code § 31C-8(b)(1): Respondent made a misrepresentation of material fact in the application for license or renewal by misrepresenting the correct name of the licensee's Resident Agent. On the license application form (Exhibit 23, at p. 2), JRK lists Fernando Guedes, Jr. as the resident agent, and gives his address as 18311 Fable Dr., Boyds MD 20841. This address contrasts with the address listed for the resident agent of JRK with the State of Maryland (Exhibits 18 and 39). There, the resident agent is listed as "Fernando L. Guedes" at the address 18317 Tapwood RD, Boyds MD 20841.

On the other hand, the Board of Registration cannot conclude from the evidence of record (Exhibits 18, 23 and 39 and Tr. 47-52) that this misstatement of the resident agent's address was intentional, especially since Fernando Guedes, Sr., is also listed on the license application, albeit as the "Vice President/Member name," at the correct address of the resident agent -- 18317 Tapwood RD, Boyds MD 20841. In the opinion of the Board of Registration, this mix-up of the resident agent's name and address would not, in and of itself, justify revocation of the license in question. Rather, at most, it would be grounds for suspension of the license until the defect was cured. Nevertheless, in view of the other findings listed herein, the Board of Registration revokes JRK's license;<sup>2</sup>

- b. County Code § 31 C-8(b)(2): Respondent committed fraud in connection with building activity conducted under the requirements of this Chapter by forging the homeowner's signature on a building permit application with regard to the construction of a home at 5608 McLean Drive, Bethesda, MD 20814. Scott Davis, the co-owner of the property at 5608 McLean Drive, Bethesda, Maryland, testified that he entered into a contract with JRK on December 22, 2014 for work on his home (Exhibit 7), but that he never signed an application for a building permit (Exhibit 8); nor did he authorize anyone to sign his name thereto. Tr. 92-95. Nevertheless, signatures purporting to be his, were affixed to the permit application filed by JRK with the Department of Permitting Services, and one of those signatures inaccurately asserts that he would serve as the "general contractor" for the proposed construction;

<sup>2</sup> The County's attorney argued at the hearing that the misstatement of the name and address of the resident agent was a material fact in an application for a builders license, and it was therefore grounds for the revocation of the license pursuant to Code Section 31C-8(b)(1) and COMCOR, Section 31C.00.01.03.4(b). . . . "[F]or purposes of legal proceedings, correct identity of a resident agent is essential in order to ensure adequate notice of legal proceedings against the entity." Tr. 51. However, Eric Friedman, OCP's Director, testified in response to questions by the Hearing Examiner, that the address mix-up would not itself warrant revocation. Tr. 49-50.

MR. GROSSMAN: But aside from . . . that little confusion aspect, did it have any substantive impact on any failures by JRK to perform their duties under the -- the builders contracts?

MR. FRIEDMAN: No. I don't think so. I think that the only concern would be in terms of knowing who is -- who is the real agent -- resident agent for purposes of process of service or things of that sort. But in terms of -- of constructing homes or whether they complied with or violated building codes and things of that sort, that confusion I don't think would address folks' concerns.

MR. GROSSMAN: So I take it that if, in fact, JRK had done a perfect job in constructing these homes, that the confusion about the resident agent wouldn't be a grounds for rev- -- or you wouldn't seek revocation of their license over that?

MR. FRIEDMAN: No. I think that would be correct.

- c. County Code § 31C-8(b)(4): Respondent violated the Building Code (County Code Section 8-1 *et seq.*)<sup>3</sup> and other laws of the County or State, as evidenced by:
- 1) the Notice of Violation (Exhibit 27) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm Street, for improper garage fire separation, improper drainage slope, improper gas piping, improper attic access and improper basement insulation, all in violation of the Building Code and Residential Building Permit #712492 (Exhibit 14), as testified to at the hearing (Tr. 65-72) and as documented by a professional inspection report (Ex. 40);
  - 2) the Notice of Violation (Exhibit 28) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm Street, for constructing a retaining wall without obtaining the required permit in violation of the Building Code, as testified to at the hearing (Tr. 65-72);
  - 3) the Notice of Violation (Exhibits 35 and 35-A), issued to JRK on December 28, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 5612 McLean Drive, Bethesda, MD 20814, for improper installation of stone veneer, in violation of the Building Code and Residential Building Permit #729629 (Exhibit 16), as testified to at the hearing (Tr. 65-72) and documented by a professional inspection report (Exhibit 42);
  - 4) JRK entering contracts with Scott and Evelyne Davis on December 22, 2014 (Exhibit 7) and Douglas and Holly Kammerer on March 17, 2015 (Exhibit 9) to build their homes, when at the time of contracting, JRK did not have a Building Contractor's license issued by OCP. A Building Contractor's license was first issued to JRK thereafter on April 9, 2015 (Exhibits 11 and 36). Entering into these contracts therefore violated County Code § 31C-2(a)(1), which provides that, "A builder must not engage in the business of constructing new homes or act in the capacity of a building contractor in the County unless the builder is licensed by [OCP]." JRK held itself out as being available to construct new homes to both the Davises and the Kammerers when it entered contracts to construct their homes and engaged in the business of erecting new homes while not licensed to do so;<sup>4</sup> and
  - 5) failing to place funds in an escrow account pursuant to the State of Maryland's Custom Home Protection Act, a/k/a CHPA (Md. Code Ann., Real Property §§10-501 – 509), with regard to the construction of the Kammerers' home at 4503 Elm Street, Bethesda,

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<sup>3</sup> Chapter 8 of the Montgomery County Code constitutes the County's Building Code, which incorporates the latest edition of the ICC International Building Code and other applicable codes through COMCOR Regulations 08.00.02.01, *et seq.* Footnotes 3, 4 and 5 on Page 9 of Appendix I, attached to the Hearing Examiner's Report, cite specific references to applicable Building Code provisions.

<sup>4</sup> See also COMCOR §31C.00.01.03.1 ("A builder must not engage in the business of erecting or otherwise creating a new home unless licensed with [OCP]"); and § 31C.00.01.03.2 ("For the purpose of these regulations, the term 'engaging in the business of erecting or otherwise creating a new home' includes constructing any new home for sale, acting as prime contractor to construct any new home for another person or advertising or holding oneself out as constructing or being available to construct a new home or homes... The term also includes a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to a purchaser.")

MD 20815. The home JRK agreed to build is a “custom home” under the CHPA, as it is a single family dwelling constructed to be the Kammerers’ residence on land owned by the Kammerers.<sup>5</sup> See CHPA § 10-501(c). The contract between the Kammerers and JRK was a custom home contract, as it was a contract worth in excess of \$20,000 to furnish labor and materials in the construction of a custom home. See CHPA § 10-501(e). CHPA § 10-504(a)(1) mandates that “a custom home builder ... shall place the consideration [paid] into an escrow account.” The testimony establishes that, despite inquiry from the Kammerers, JRK failed to ever produce any information or confirm that they in fact held the funds in an escrow account. Tr. 75-79 and 86-87. As noted by the County attorney, JRK also failed to make certain disclosures in the contract (Exhibit 9) that are required by CHPA §§10-505 – 506.

- d. County Code § 31 C-8(b)(7): In violation of this provision, Respondent failed to file an amendment to its February 23, 2017 application to renew its Building Contractor’s License (Exhibit 23), within 30 days of the filing of lawsuits against JRK, even though the filing of those lawsuits constituted a material change to the information provided by JRK on the application. Section VI, Item 4 of the renewal application (Exhibit 23) requires the applicant to disclose whether it is party to any pending litigation. The application notifies the individual who signs off on the application of the obligation to update *any* changes to the information within 30 days. (Exhibit 23, Section IX) After JRK filed this renewal application, it was named as a defendant in two different actions – one filed by the Kammerers on October 25, 2017 (Exhibit 31), and one filed by Davises on December 28, 2017 (Exhibit 38). Both suits addressed JRK’s performance or lack thereof under homebuilder contracts, and are material to JRK’s status as a new home builder in the County. JRK failed to notify OCP of either suit. Tr. 60-63. Under County Code § 31C-8(b)(7), this failure to notify OCP of this material change to its application is grounds to suspend or revoke JRK’s license; and
- e. County Code § 31C-8(b)(13): Respondent allegedly diverted construction materials that were paid for by Messrs. Williams and Coyne for the completion of a construction project in their home, located at 5612 McLean Drive, Bethesda, Maryland, and used the property for another project, with intent to defraud Messrs. Williams and Coyne. Both Mr. Williams and Mr. Coyne testified that they purchased and owned these construction materials (grey Hardie board shingles, a palette of slate, and stone pavers), and they told JRK’s agent, Fernando Guedes, Junior, that the materials were to remain at 5612 McLean for their future use. Tr. 104, 106-108, 114-115. Nevertheless, those materials disappeared from their premises, without their permission, and they believe that they were relocated to a project at 6002 Roosevelt Street, in Bethesda, also being worked on by JRK (Exhibit 37). Messrs. Williams and Coyne further testified that they spotted “similar materials” at 6002 Roosevelt that they “believed to be” the materials missing from their property, and that despite asking JRK’s agents, they have not been compensated for the missing materials. Tr. 108, 114-118.

The County concluded, in its Proposed Findings of Fact and Conclusions of Law,<sup>6</sup> that,

<sup>5</sup> Fernanado Guedes, Jr, admitted the home constructed was a “custom home” in JRK’s responses to requests for admissions. (Exhibit 36 at p. 4).

<sup>6</sup> Docket No. 15, pp. 20-21; Appendix I to the Hearing Examiner’s Report, Appendix I, p. 11.

More likely than not, this testimony establishes that the materials at 6002 Roosevelt Street were the materials from 5612 McLean. JRK did not ever compensate Mr. Williams or Mr. Coyne for these materials.




While the Board of Registration does not disagree with the County's "more likely than not" deduction, it cannot conclude that such a determination of likeliness is sufficient to warrant a formal finding that the materials observed at 6002 Roosevelt were actually the same as those missing from 5612 McLean and that they were improperly converted by JRK's agents. The County could have proved the point by taking discovery from JRK under MCAPA Section 2A-7(b)(4), thereby questioning the source of the materials located at 6002 Roosevelt and asking for evidence regarding their purchase. The County apparently did not do so, and if it did attempt such discovery, it did not ask the Hearing Examiner to enforce any such requests, nor introduce such evidence at the hearing. Without more proof, which could easily have been obtained, the Board of Registration does not feel there is sufficient evidence for it to make a finding that the materials in question were improperly converted by JRK. The Board of Registration therefore does not rely on this alleged violation of County Code § 31C-8(b)(13) in reaching its findings, conclusions and decision that JRK's License should be revoked. There is ample evidence, as outlined above, supporting this decision without relying on the missing materials issue.



- 12. Based on the overwhelming evidence in this record, the Board of Registration finds and concludes that the Respondent has violated CHPA (Md. Code Ann., Real Property §§10-501 – 509), and repeatedly violated Montgomery County Code Chapter 31C, warranting revocation of its Building Contractor's License # BC 218983. Therefore, the Board of Registration hereby revokes Respondent's Building Contractor's License # BC 218983.

**Order**

Based on the foregoing findings and conclusions, and after a thorough review of the entire evidence of record, **the Board of Registration hereby revokes the Respondent's Building Contractor's License #BC 218983.**

So Ordered on behalf of the Board of Registration, this 10<sup>th</sup> Day of JULY, 2018.

  
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**NOTICE OF APPEAL RIGHTS**

The Respondent is hereby notified that three statutory provisions and a Board of Appeals Rule bear on the question of the appropriate procedure for seeking appellate review in this matter.

Montgomery County Code Section 2A-11(a) provides that *“A party aggrieved by a final decision in a case governed by this Article may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals.”*

However, MCAPA §2A-3(a) provides: *“Where any provision of this article conflicts with a substantive provision of an act pertaining to a particular agency, the latter shall prevail.”*

You are hereby further notified that there is a specific statutory provision that applies to cases arising from Board of Registration decisions in this type of case. Montgomery County Code Section 31C-8(c) provides that *“The builder may appeal a decision of the Board to the Montgomery County Board of Appeals.”*

Board of Appeals Rule 2.1 specifies that *“Unless the applicable law specifies a shorter time, an appeal from an administrative decision must be filed within 30 days after the day the decision was mailed. The required forms must be obtained at the office of the Board of Appeals.”*

While it is the opinion of the Board of Registration that the appropriate avenue for review from this Board’s decision is with the Board of Appeals in the first instance under Code Section 31C-8(c), if the Respondent elects to seek appellate review in this matter, it should consult with counsel as to which appellate route is appropriate in this case, and pursue it in a timely manner.

Copies to:

Eric Friedman, Director, Montgomery County Office of Consumer Protection

Erin Ashbarry, Esquire, Associate County Attorney

JRK Contractor LLC t/a JRK Builders

c/o Fernando Guedes Jr., 18311 Fable Drive, Boyds, MD 20841 and

c/o Fernando Guedes Sr., 18317 Tapwood Road, Boyds, MD 20841